

**Chapter 20 reserved**

**DEPARTMENT OF PUBLIC HEALTH  
AND HUMAN SERVICES**

**CHAPTER 21**

**DOCUMENTATION AND STUDY OF ABORTION**

**Subchapter 1**

**Documentation and Studies of Abortion**

<b>Rule</b>	<b>37. 21. 101</b>	<b>Definitions</b>
		<b>Rules 02 and 03 reserved</b>
	<b>37. 21. 104</b>	<b>Certificate of Informed Consent</b>
	<b>37. 21. 105</b>	<b>Confidentiality</b>
		<b>Rules 06 through 09 reserved</b>
	<b>37. 21. 110</b>	<b>Facility Report</b>
	<b>37. 21. 111</b>	<b>Pathology Studies</b>
		<b>Rules 12 through 14 reserved</b>
	<b>37. 21. 115</b>	<b>Disposition of Fetus or Dead Infant</b>

## Subchapter 1

## Documentation and Studies of Abortion

37.21.101 DEFINITIONS (1) "Abortion" means the performance of, or assistance or participation in the performance of, or submission to, an act or operation intended to terminate a pregnancy without live birth.

(2) "Department" means the department of public health and human services.

(3) "Facility" means a hospital, health care facility, physician's office or other place in which an abortion is performed.

(4) "Viability" means the ability of a fetus to live outside the mother's womb, albeit with artificial aid. (History: Sec. 50-20-105, MCA; IMP, Sec. 50-20-105, MCA; NEW, EMERG, Eff. 7/1/74; NEW, Eff. 10/5/74; TRANS, from DHES, 2001 MAR p. 398.)

Rules 02 and 03 reserved

**37.21.104 CERTIFICATE OF INFORMED CONSENT** (1) The written statement of informed consent required by 50-20-106, MCA, is to be made on a form prescribed by and obtained from the department. (History: Sec. 50-20-106, MCA; IMP, Sec. 50-20-106, MCA; NEW, EMERG, Eff. 7/1/74; NEW, Eff. 10/5/74; TRANS, from DHES, 2001 MAR p. 398.)

**37.21.105 CONFIDENTIALITY** (1) In connection with an abortion, the facility shall keep on file the original of each of the documents required by the Montana Abortion Control Act relating to informed consent, notice of abortion, certification of necessity of abortion to preserve the life or health of the mother, and certification of necessity of abortion to preserve the life of the mother.

(2) All reports and documents required by this act shall be treated with the confidentiality afforded to medical records, subject to such disclosure as is permitted by law. (History: Sec. 50-20-110, MCA; IMP, Sec. 50-20-110, MCA; NEW, EMERG, Eff. 7/1/74; NEW, Eff. 10/5/74; TRANS, from DHES, 2001 MAR p. 398.)

Rules 06 through 09 reserved

**37.21.110 FACILITY REPORT** (1) Every facility, as defined herein, shall keep on file a statement dated and certified by the physician who performed the abortion setting forth the following information:

(a) Name, address, state and county of residence, date of birth, marital status, race, educational background, and patient identification number of the woman upon whom the abortion was performed.

(b) If a minor and unmarried, name and address of her living parents, or her custodian or legal guardian.

(c) Statement whether or not parent or legal guardian has been notified of the abortion.

(d) The information as to the first day of the last normal menses as provided by the woman and the number of her prior pregnancies, live births, miscarriages, induced abortions and living children.

(e) The date, and the name and location of the facility in which the abortion was performed, and the name and address of the physician performing the abortion.

(f) Information upon which the physician concluded the patient was pregnant.

(g) The medical procedure or procedures employed to administer the abortion.

(h) The approximate gestational age of the fetus.

(i) The vital signs of the fetus, after abortion, if any.

(j) If viable, the medical procedures employed to preserve the life and health of the fetus.

(k) If a premature infant was born alive and viable and the infant did not survive, the apparent cause of death.

(l) If the fetus was viable, but was endangered or destroyed during the abortion procedure prior to birth, the reason therefor.

(m) Complications in the woman resulting directly or indirectly from the abortion.

(2) The names and addresses of the patient, her parents or guardians, and the physician who performed the abortion will be kept confidential and will not be reported to the department. (History: Sec. 50-20-105 and 50-20-110, MCA; IMP, Sec. 50-20-110, MCA; NEW, EMERG, Eff. 7/1/74; NEW, Eff. 10/5/74; AMD, 1981 MAR p. 1188, Eff. 10/16/81; TRANS, from DHES, 2001 MAR p. 398.)

**37. 21. 111 PATHOLOGY STUDIES** (1) The products of conception and any other tissue removed as a consequence of the abortion shall be examined by the physician performing the abortion or by a pathologist.

(2) The pathology examination shall include, but not be limited to, a gross examination, and may include other studies at the discretion of the attending physician or the pathologist, including studies for the presence of micro-organisms or genetic defects.

(3) If the products of conception are referred to a pathologist, or if the abortion is performed within a hospital, the physician performing the abortion shall insure that all of the products of conception and any other tissue be delivered to the pathologist.

(4) If the gross examination fails to provide evidence of pregnancy, a microscopic examination shall be performed to obtain such evidence.

(5) The physician performing the abortion or the pathologist, whichever conducts the definitive examination, shall file with the facility, and the facility shall keep on file, a report containing such information as would be customarily included in such a report, and including but not limited to the following:

(a) Evidence as to whether the woman was in fact pregnant;

(b) The medical procedure employed to administer the abortion;

(c) The approximate gestational age, length and weight of the fetus, if possible to determine;

(d) Any apparent abnormalities observed in the products of conception.

(6) If, as a result of the abortion, a premature infant was born alive and viable, but subsequently died, the dead infant shall be delivered to a pathologist for post-mortem examination, and the report thereof shall indicate the above information and also the apparent cause of death. This requirement is subject to the provisions of 50-21-103, MCA, if applicable. (History: Sec. 50-20-110, MCA; IMP, Sec. 50-20-110, MCA; NEW, EMERG, Eff. 7/1/74; NEW, Eff. 10/5/74; TRANS, from DHES, 2001 MAR p. 398.)

Rules 12 through 14 reserved

**37.21.115 DISPOSITION OF FETUS OR DEAD INFANT** (1) The products of conception and any other tissue removed as a consequence of the abortion, except such tissue as necessary for examination, shall be disposed of in a manner similar to that for other surgically removed tissue at that facility, and in a way that does not endanger public health nor create a public nuisance.

(2) However, any dead fetus or infant having been removed after 20 weeks gestation may be disposed of by the facility only if the surviving parent or parents so authorize the facility. If the surviving parent or parents do not wish the fetus or infant to be disposed of by the facility, they then will be responsible for the disposition of the remains in a humane manner of their choosing.

(3) In the event that the facility is unable to secure an authorization, the facility may dispose of the dead fetus or infant in the manner indicated in (1) above. (History: Sec. 50-20-105, MCA; IMP, Sec. 50-20-105, MCA; NEW, EMERG, Eff. 7/1/74; NEW, Eff. 10/5/74; TRANS, from DHES, 2001 MAR p. 398.)

**Chapters 22 through 24 reserved**